

AN ACT

RELATING TO TRUSTS AND ESTATES INCLUDING THE ADMINISTRATION OF
SMALL ESTATES, AND CERTAIN STATE INHERITANCE TAX PROVISIONS,
AND INCLUDING APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 422.7, subsection 4, Code Supplement 2011, is amended by striking the subsection.

Sec. 2. Section 450.4, subsections 7 and 8, Code 2011, are amended by striking the subsections.

Sec. 3. Section 633.237, subsections 1, 2, and 4, Code 2011, are amended to read as follows:

1. Following the appointment of a personal representative of the estate of the decedent, ~~who is not the spouse~~, the personal representative shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election in writing with the clerk of court electing the share as set forth in section 633.236 and sections 633.238 through 633.246, the spouse shall be deemed to take under the will or to receive the intestate share. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the personal representative shall make application to the court for an order pursuant to section 633.244.

2. Following the death of a settlor of a revocable trust, the trustee of such revocable trust ~~who is not the spouse~~ shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying

the surviving spouse that unless, within four months after service of the notice, the spouse files an election with the trustee electing the share as set forth in section 633.236 and sections 633.238 through 633.246, the spouse shall be deemed to take under the terms of the revocable trust. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the trustee shall make application to the court for an order pursuant to section 633.244.

4. The notice provisions under subsections 1 and 2 are not applicable if the surviving spouse ~~is a personal representative of the estate or a trustee of a revocable trust or if the surviving spouse~~ or the spouse's conservator files, at any time, an election to take under the will, receive the intestate share, or take under the revocable trust. If the surviving spouse fails to file an election under this section within four months of the ~~decedent's death~~ date notice is served, it shall be conclusively presumed that the surviving spouse elects to take under the will, receive the intestate share, or take under the revocable trust.

Sec. 4. Section 633.246, Code 2011, is amended to read as follows:

633.246 Election not subject to change.

1. An election by or on behalf of a surviving spouse to take the share provided in section 633.211, 633.212, 633.236, 633.238, 633.240, or 633.244 shall be binding and shall not be subject to change except for such causes as would justify an equitable decree for the rescission of a deed.

2. An affirmative election to take under the will, receive the intestate share, or take under the revocable trust shall be irrevocable when filed as provided in section 633.237.

Sec. 5. Section 633.350, Code 2011, is amended to read as follows:

633.350 Title to decedent's estate — when property passes — possession and control thereof — liability for administration expenses, debts, and family allowance.

Except as otherwise provided in this probate code, when a person dies, the title to the person's property, real and personal, passes to the person to whom it is devised by the person's last will, or, in the absence of such disposition, to the persons who succeed to the estate as provided in this probate code, but all of the property shall be subject to

the possession of the personal representative as provided in section 633.351 and to the control of the court for the purposes of administration, sale, or other disposition under the provisions of law, and such property, except homestead and other exempt property, shall be chargeable with the payment of debts and charges ~~against~~ of the estate. There shall be no priority as between real and personal property, except as provided in this probate code or by the will of the decedent. If real property is titled at any time in a decedent's estate, such property shall be treated as titled in the name of the personal representative of the estate.

Sec. 6. Section 633.351, Code 2011, is amended to read as follows:

633.351 Possession of real and personal property.

~~If there is no distributee of the real estate present and competent to take possession, or if there is a lease of such real estate outstanding, or if the distributees present and competent consent thereto~~ During the period of administration, the personal representative shall take possession of ~~such~~ the ~~decedent's~~ real estate, except the homestead and other property exempt to the surviving spouse. Every personal representative shall take possession of all the personal property of the decedent, except the property exempt to the surviving spouse. The personal representative may maintain an action for the possession of such real and personal property or to determine the title to any property of the decedent. Until property is distributed, the personal representative shall take reasonable steps to safeguard such property, pay any expenses related to such property, and collect any income generated by such property. Unless otherwise provided by the decedent's will, all such expenses shall be paid from the residuary estate and all such income shall be considered a part of the residuary estate.

Sec. 7. Section 633.352, Code 2011, is amended to read as follows:

633.352 Collection of rents and payment of taxes and charges.

Unless otherwise provided by the will, the ~~personal representative shall allocate and distribute provisions of~~ chapter 637 that conflict with this part 3 shall not apply to the allocation and distribution of estate income of an estate in accordance with chapter 637.

Sec. 8. Section 633.355, Code 2011, is amended to read as follows:

633.355 Delivery of specific devise after ~~nine~~ twelve months.

Unless the court, for cause shown, determines that the possession of the personal representative shall continue for a longer period, the personal representative shall deliver all specifically devised property to the devisees entitled thereto after the expiration of ~~nine~~ twelve months from the date of appointment of the personal representative. This section shall not preclude the court from directing that such delivery be made before such period has expired, nor shall the personal representative be prevented from ~~sooner settling the estate and~~ delivering such property at an earlier time.

Sec. 9. Section 633.374, Code 2011, is amended to read as follows:

633.374 Allowance to surviving spouse.

1. ~~If the personal representative of the estate is not the decedent's spouse, the~~ The personal representative of the estate shall ~~cause written notice concerning support to be mailed~~ mail to the surviving spouse pursuant to section 633.40, subsection 5, a written notice regarding the right to request a spousal allowance. The notice shall inform the surviving spouse of the surviving spouse's right to ~~apply,~~ submit an application to the court within four months of service of the notice, for support for a period of twelve months following the death of the decedent, and for support of the decedent's dependents who reside with the spouse for the same period of time.

2. The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property including assets held in a revocable trust of which the decedent is the settlor to the extent that estate assets are not sufficient as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. ~~If the application is not made by the personal representative, notice~~ Notice of hearing upon the application shall be given to the surviving spouse, personal representative if the application is not made by the personal representative, trustee of any revocable trust of which the decedent is the settlor, and all other interested persons. The court shall take into consideration the station in life of the surviving spouse, ~~and~~ the assets and condition of the estate and any revocable trust of which the decedent is the settlor, the nonprobate assets received by the surviving spouse by reason of

the death of the decedent, and the income and other resources of the surviving spouse. If the trustee of a revocable trust of which the decedent was a settlor has previously made payments under section 633A.3114 to the spouse, the court shall reduce the award by the amount of such payments. The allowance shall also include such additional amount as the court deems reasonable for the proper support, during such period, of dependents of the decedent who reside with the surviving spouse. Such allowance to the surviving spouse shall not abate upon the death or remarriage of such spouse. If an application for support has not been filed within four months following service of the notice by or on behalf of the surviving spouse and the dependents of the decedent who reside with the surviving spouse, the surviving spouse and the dependents of the decedent shall be deemed to have waived the right to apply for support during the administration of the estate.

3. A surviving spouse who qualifies for a support allowance under this section may waive the right to such allowance for the surviving spouse and for the dependents of the decedent who reside with the surviving spouse by filing an affidavit acknowledging receipt of notice and irrevocably waiving the right to support under this section.

Sec. 10. Section 633.375, Code 2011, is amended to read as follows:

633.375 Review of allowance to surviving spouse.

The court may, upon the petition of ~~the spouse, or other person interested~~ any interested person, and after hearing pursuant to notice to all interested parties, review ~~such the~~ the allowance and increase or decrease the ~~same~~ amount and make such other orders as it may deem proper.

Sec. 11. Section 633.376, Code 2011, is amended to read as follows:

633.376 Allowance to children who do not reside with surviving spouse.

1. The court may also make an allowance under the same terms and conditions as provided in section 633.374 of an amount the court deems reasonable in light of the assets and condition of the estate, to provide for proper support during the period of twelve months following the decedent's death to a child of the decedent who does not reside with the surviving spouse and is any of the following:

- a. ~~less~~ Less than eighteen years of age.
- b. ~~or who is between~~ Between the ages of eighteen and

twenty-two years who is any of the following:

(1) ~~regularly~~ Regularly attending an accredited school in pursuance of a course of study leading to a high school diploma or its equivalent~~7.~~

(2) ~~or regularly~~ Regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs~~7.~~

(3) ~~or is~~ Is, in good faith, a full-time student in a college, university, or community college~~7.~~

(4) ~~or has~~ Has been accepted for admission to a college, university, or community college and the next regular term has not yet begun~~7.~~

c. ~~or Is~~ Is a child of any age who is dependent because of physical or mental disability; ~~who does not reside with the surviving spouse, of an amount it deems reasonable in the light of the assets and condition of the estate, to provide for the child's proper support during the period of twelve months.~~

2. The estate's personal representative shall ~~cause written notice to be mailed~~ mail pursuant to section 633.40, subsection 5, to the legal guardian of each child qualified under subsection 1 and to each child or the guardian ad litem for such child if necessary, who has no legal guardian, a written notice regarding the right to request an allowance. The notice shall inform the child and the child's guardian, if applicable, of the right to ~~apply~~ submit an application to the court, within four months after service of the notice, for support for a period of twelve months following the decedent's death. If an application for support has not been filed within four months after service of the notice by or on behalf of the child qualifying for support under subsection 1, the child shall be deemed to have waived the right to support under this section. A child who qualifies for support under this section or the child's guardian ad litem may waive the child's right to such support by filing an affidavit acknowledging receipt of notice and irrevocably waiving the child's right to support under this section.

Sec. 12. Section 633.377, Code 2011, is amended to read as follows:

633.377 Review of allowance to minor children.

The court may, upon the petition of any interested person, and after hearing pursuant to notice to all interested parties, review the allowance made to the minor children who do not

reside with the surviving spouse and may increase or decrease the ~~same~~ amount and make such other orders as it may deem proper.

Sec. 13. Section 633.471, Code 2011, is amended to read as follows:

633.471 Right of retainer.

When a distributee of an estate is indebted to the estate, or if a distributee takes as an heir of a deceased devisee indebted to the estate, the amount of such indebtedness, if due, or the present worth of the indebtedness, if not due, shall be treated as a setoff and retained by the personal representative out of any testate or intestate property, real or personal, of the estate to which such distributee is entitled. In intestate estates, the personal representative shall have the same right of setoff and retainer against an heir whose ancestor was indebted to the estate. The right of setoff and retainer shall be prior and superior to the rights of judgment creditors, heirs or assigns of such distributee ~~and shall not be barred by the statute of limitations, nor by a discharge in bankruptcy.~~

Sec. 14. Section 633.561, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 7. If the court determines upon application that it is appropriate or necessary, the court may order that the attorney appointed pursuant to this section be given copies of and access to the proposed ward's health information by describing with reasonable specificity the health information to be disclosed or accessed, for the purpose of fulfilling the attorney's responsibilities pursuant to this section.

Sec. 15. Section 633A.2203, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A spendthrift provision, or a provision giving the trustee discretion to distribute income or principal to a beneficiary or among beneficiaries, in the terms of the trust is presumed to constitute a material purpose of the trust.

Sec. 16. Section 633A.3102, subsection 5, Code 2011, is amended to read as follows:

5. The settlor's powers with respect to revocation or modification may be exercised by an agent under a power of attorney only ~~and to the extent the power of attorney expressly so authorizes.~~ if all of the following apply:

a. The trust instrument expressly authorizes an agent under

a power of attorney to exercise such powers.

b. The power of attorney expressly authorizes an agent acting under the power of attorney to exercise such powers.

Sec. 17. Section 633A.3104, subsection 2, Code 2011, is amended by striking the subsection and inserting in lieu thereof the following:

2. Following the death of a settlor, if the settlor's estate is inadequate to satisfy the debts of the settlor and the charges of the settlor's estate, the property of a revocable trust, to the extent of the value of the property over which the settlor had a power of revocation, is subject to all of the following:

a. The charges of the settlor's estate.

b. The debts of the settlor unless barred as provided in section 633A.3109.

Sec. 18. Section 633A.3104, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. The personal representative of the settlor's estate shall submit a statement to the trustee within the period for filing claims against the trust of the amount by which the assets of the estate are insufficient to pay the debts and charges. Subject to the provisions of section 633A.3111, the trustee shall remit to the personal representative the amount needed to pay the charges and shall pay the debts directly to the creditors unless the trustee and personal representative agree to a different manner of payment.

Sec. 19. Section 633A.3108, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

633A.3108 Limitation on contest of revocable trust.

Unless previously barred by adjudication, consent, or other limitation, if notice is published or given as provided in section 633A.3110 within one year of the settlor's death, a proceeding to contest the validity of a revocable trust must be brought within the period specified in that notice. If notice is not published or given within that period, a proceeding to contest the validity of a trust must be brought no later than one year following the death of the settlor.

Sec. 20. Section 633A.3109, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

633A.3109 Limitation on creditor rights against revocable trust assets after settlor's death.

1. If notice is published or given as provided in section 633A.3110 within one year of the settlor's death, any claim against the trust assets will be forever barred unless the creditor files a claim as provided for and within the period specified in the notice.

2. If notice is not published or given, a creditor of a deceased settlor of a revocable trust must bring suit to enforce its claim against the assets of the decedent's trust within one year of the decedent's death or be forever barred from collecting against the trust assets. The one-year limitation period shall not be extended by the commencement of probate administration for the settlor.

3. The notice under sections 633.230 and 633.304 in probate of the settlor's estate does not affect a creditor's claim under this section.

Sec. 21. Section 633A.3110, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

633A.3110 Notice to creditors, heirs, and spouse.

1. As used in this section, "*heir*" means only such person who would, in an intestate estate, be entitled to a share under section 633.219.

2. The trustee may give notice as described herein to creditors, heirs, and the surviving spouse of the settlor for the purpose of establishing their rights to contest the trust and to file claims against the trust assets.

a. No later than the end of the one-year period beginning with the settlor's date of death, the trustee may publish a notice once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the settlor was a resident at the time of death. If the settlor was not a resident of Iowa, but the principal place of administration is in Iowa, the trustee shall publish notice in the county that is the principal place of administration pursuant to section 633A.6102.

b. If notice is published pursuant to paragraph "*a*", the trustee shall also give notice by ordinary mail within one year of the settlor's death to the surviving spouse and the heirs of the decedent whose identities are reasonably ascertainable, at such person's last known address.

c. If notice is published pursuant to paragraph "*a*", the trustee shall also give notice to creditors of the settlor who are known or reasonably ascertainable within the period for

filing claims specified in the published notice and who the trustee believes own or possess a claim, which will not or may not be paid or otherwise satisfied during the administration of the trust, by ordinary mail to each person at the person's last known address.

d. The notices described in this subsection shall, if given, include notification of the settlor's death, and the fact that any action to contest the validity of the trust must be brought within the later to occur of four months from the date of the second publication of the notice made pursuant to paragraph "a" or thirty days from the date of mailing of the notice pursuant to paragraph "b", and that any claim against the trust assets will be forever barred unless proof of a creditor's claim is mailed to the trustee by certified mail, return receipt requested, within the later to occur of four months from the second publication of notice pursuant to paragraph "a" or thirty days from the date of mailing the notice pursuant to paragraph "b", if required. A person who is not entitled to receive a mailed notice or who does not make a claim within the appropriate period is forever barred from asserting any claim against the trust or the trust assets.

3. If notice is published pursuant to paragraph "a", claims of creditors that are discovered or which become reasonably ascertainable after the end of the notice period are barred.

4. If notice is not published and given as provided in this section, the right to challenge the trust and file claims against the trust assets are limited as provided in sections 633A.3108 and 633A.3109.

5. The notice described in subsection 2 shall be substantially in the following form:

To all persons regarding, deceased, who died on or about, (year) You are hereby notified that is the trustee of the Trust.

Any action to contest the validity of the trust must be brought in the District Court of County, Iowa, within the later to occur of four months from the date of second publication of this notice, or thirty days from the date of mailing this notice to all heirs of the decedent settlor and the spouse of the decedent settlor whose identities are reasonably ascertainable. Any suit not filed within this period shall be forever barred.

Notice is further given that any person or entity possessing a claim against the trust must mail proof of the claim to the

trustee at the address listed below via certified mail, return receipt requested, by the later to occur of four months from the second publication of this notice or thirty days from the date of mailing this notice if required, or the claim shall be forever barred, unless paid or otherwise satisfied.

Dated this day of, (year)....

..... Trust

.....

Trustee

Address:

.....

Date of second publication ... day of, (year)

6. The proof of claim must be in writing stating the party's name and address and describing the nature and amount of the claim, if ascertainable, and accompanied by an affidavit of the party or a representative of the party verifying the amount that is due, or when the amount will become due, that no payments have been made on the claim that are not credited, and that no offsets to the claim exist.

7. At any time after receipt by the trustee of a proof of claim, the trustee may give the party submitting the claim a written notice of disallowance of the claim. The notice shall be given by certified mail, return receipt requested, addressed to the party at the address stated in the claim, and to the attorney of record of the party submitting the claim. Such notice of disallowance shall advise the party submitting the claim that the claim has been disallowed and will be forever barred unless suit is filed against the trustee to enforce the claim within thirty days of the date of the mailing of the notice of disallowance. If suit is filed, the provisions in chapter 633 relating to actions to enforce a claim shall apply with the trust and trustee substituted for the estate and personal representative.

8. The trustee and creditor may agree to extend the limitations period for filing an action to enforce the claim. If the creditor fails to properly file its claim within the established time period or bring an action to enforce its claim within the established time period, the creditor's claim shall be forever barred.

9. The trustee shall give notice to the beneficiaries of the trust as required by section 633A.4213.

10. The trustee shall give notice to the spouse of the right to elect to take an elective share of the trust as required

by section 633.237 and the right to a spousal allowance as required by section 633A.3114.

11. The trustee shall give notice to eligible children not residing with the surviving spouse of their right to an allowance as required by section 633A.3115.

Sec. 22. Section 633A.3111, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

633A.3111 Rights of trustee regarding claims in a probate administration.

1. If administration of an estate is commenced in which a revocable trust or a trust in which a holder had at the date of the holder's death a presently exercisable general power of appointment could be held responsible for the payment of debts of the settlor or holder and the charges of the settlor's or holder's estate, the trustee of the trust shall be an interested party in the administration of the estate.

2. The trustee shall receive notice of all potential claims against the trust assets from the personal representative of the estate and must either authorize the payments for which the trust may be found liable or be given the opportunity to dispute or defend any such payment.

3. If debts of the settlor are paid from trust property, the trustee or trust beneficiaries shall have a right to be reimbursed from the settlor's estate for such payment until the final report of the settlor's estate has been approved, unless the debts have been barred from being collected from the estate by notice pursuant to section 633.230 or 633.304.

Sec. 23. Section 633A.3112, Code Supplement 2011, is amended by striking the section and inserting in lieu thereof the following:

633A.3112 Trustee's liability for distributions.

1. A trustee who distributes trust assets without making adequate provisions for the payment of debts and charges that are known or reasonably ascertainable at the time of the distribution shall be jointly and severally liable with the beneficiaries to the extent of the distributions made.

2. A trustee shall be entitled to indemnification from the beneficiaries for all amounts paid for debts and charges under this section, to the extent of distributions made.

Sec. 24. NEW SECTION. **633A.3113 Definitions — revocable trusts.**

As used in this subchapter:

1. "*Charges*" means the same as defined in section 633.3.
2. "*Costs of administration*" means the same as defined in section 633.3.
3. "*Debts*" means the same as defined in section 633.3.

Sec. 25. NEW SECTION. 633A.3114 Allowance to surviving spouse.

1. Unless a personal representative has been appointed for the settlor's estate, following the death of a settlor of a revocable trust, the trustee of such revocable trust shall mail a written notice to the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse of the surviving spouse's right to submit an application to the trustee, within four months of service of the notice, for a support allowance for a period of twelve months following the death of the settlor, and for a support allowance for the settlor's dependents who reside with the spouse for the same period of time.

2. Upon receipt of an application for a support allowance, the trustee may set off and pay to the surviving spouse a sufficient amount of trust assets the trustee deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the settlor. The trustee shall take into consideration the station of life of the settlor's surviving spouse, the assets and condition of the trust, the probate and nonprobate assets received by the surviving spouse by reason of the settlor's death, and the income and other resources of the surviving spouse. The allowance may also include such additional amount as the trustee deems reasonable for the proper support, during such period, of the dependents of the settlor who reside with the surviving spouse. If an application for a support allowance has not been filed within four months following service of the notice by or on behalf of the surviving spouse and the dependents of the settlor who reside with the surviving spouse, the surviving spouse and dependents of the settlor shall be deemed to have waived the right to apply for a support allowance during the administration of the trust.

3. A surviving spouse who qualifies for a support allowance under this section may waive the right to such allowance for the surviving spouse and for the dependents of the settlor who reside with the surviving spouse by submitting an affidavit with the trustee acknowledging receipt of notice and irrevocably waiving the right to an allowance under this

section.

4. The opening of an estate for the settlor shall terminate the right of the surviving spouse to apply for a spousal allowance from the trustee of the settlor's revocable trust or to receive additional support payments from the trust unless the personal representative consents to a continuation of the support payments. If a spousal allowance has been paid from trust assets, the trustee or trust beneficiaries shall have a right subject to court approval to be reimbursed from the settlor's estate for such payment until the final report of the settlor's estate has been approved.

Sec. 26. NEW SECTION. 633A.3115 Allowance to children who do not reside with surviving spouse.

1. If the trustee is required to give notice under section 633A.3114, the trustee shall also mail, pursuant to section 633.40, subsection 5, to the legal guardian of each child qualified under subsection 2 and to each such child or the guardian ad litem for such child if necessary, who has no legal guardian, a written notice regarding the right to request an allowance. The notice shall inform the child and the child's guardian, if applicable, of the right to submit an application to the trustee within four months after service of the notice, for a support allowance for a period of twelve months following the decedent's death.

2. Upon receipt of an application for a support allowance, the trustee may make an allowance of an amount the trustee deems reasonable in light of the assets and condition of the trust, to provide for proper support during the period of twelve months following the decedent's death to a child of the decedent who does not reside with the settlor's surviving spouse and is any of the following:

a. Less than eighteen years of age.

b. Between the ages of eighteen and twenty-two years who is any of the following:

(1) Regularly attending an accredited school in pursuance of a course of study leading to a high school diploma or its equivalent.

(2) Regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs.

(3) Is, in good faith, a full-time student in a college, university, or community college.

(4) Has been accepted for admission to a college,

university, or community college and the next regular term has not yet begun.

c. Is a child of any age and dependent because of physical or mental disability.

3. If an application for a support allowance has not been filed within four months after service of the notice by or on behalf of the child qualifying for an allowance under subsection 2, the child shall be deemed to have waived the right to an allowance under this section. A child who qualifies for an allowance under this section or the guardian for the child, if any, may waive the child's right to such an allowance by submitting an affidavit to the trustee acknowledging receipt of notice and irrevocably waiving the child's right to an allowance under this section.

4. The opening of an estate for the settlor shall terminate the right of a child to apply for an allowance from the trustee of the settlor's revocable trust or to receive additional support payments from the trust unless the personal representative consents to a continuation of support payments. If an allowance has been paid from trust assets, the trustee or trust beneficiaries shall have a right to be reimbursed subject to court approval from the settlor's estate for such payment until the final report of the settlor's estate has been approved.

Sec. 27. Section 633A.4213, subsection 5, Code 2011, is amended by striking the subsection and inserting in lieu thereof the following:

5. a. If the trustee has refused, after written request, to provide an accounting or other required notice under this section to a qualified beneficiary, the court may do any of the following:

(1) Order the trustee to comply with the trustee's duties under this section.

(2) Assess costs, including attorney fees, against the trustee personally.

b. Except as provided in paragraph "a", the only consequence to a trustee's failure to provide the required accounting or notice is that the trustee shall not be able to rely upon the statute of limitations under section 633A.4504.

Sec. 28. Section 633A.4504, Code 2011, is amended to read as follows:

633A.4504 Limitation of action against trustee.

1. Unless previously barred by adjudication, consent,

or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received ~~a final account~~ an accounting pursuant to section 633A.4213 or other report ~~that adequately disclosing~~ discloses the existence of the claim, unless a proceeding to assert the claim is commenced within one year after the ~~earlier of the receipt of the accounting or report of the termination of the trust relationship between the trustee and beneficiary.~~ An ~~account~~ accounting or report adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.

2. For the purpose of subsection 1, a beneficiary is deemed to have received an ~~account~~ accounting or report in the following instances:

a. In the case of an adult who is reasonably capable of understanding the ~~account~~ accounting or report, if it is received by the adult personally.

b. In the case of an adult who is not reasonably capable of understanding the ~~account~~ accounting or report, if it is received by the adult's legal representative, including a guardian ad litem or other person appointed for this purpose.

c. In the case of a minor, if it is received by the minor's guardian or conservator or, if the minor does not have a guardian or conservator, if it is received by a parent of the minor who does not have a conflict of interest.

3. Any claim for breach of trust against a trustee who has presented ~~a final~~ an accounting or report to a beneficiary more than one year prior to July 1, ~~2000~~ 2011, shall be time barred unless some exception stated in this section applies which tolls the statute. Any claim arising under this section within one year of July 1, ~~2000~~ 2011, shall be time barred after one year unless an exception applies to toll the statute.

4. For the purposes of this section, "report" means a document including but not limited to a letter, delivered by or on behalf of the trustee to a beneficiary of the trust.

Sec. 29. NEW SECTION. 633A.4606 Interest as general partner.

1. Except as otherwise provided in subsection 3 or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of

the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to section 486A.303 or 488.201.

2. Except as otherwise provided in subsection 3, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

3. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of the trustee's descendants, siblings, or parents.

4. If the trustee of a revocable trust holds an interest as a general partner, the settlor shall be personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Sec. 30. Section 635.7, Code 2011, is amended to read as follows:

635.7 Report and inventory — value and conversion.

1. The personal representative is required to file the report and inventory for which provision is made in section 633.361, including all probate and nonprobate assets. This chapter does not exempt the personal representative from complying with the requirements of section 422.27, 450.22, 450.58, 633.480, or 633.481, and the administration of an estate whether converted to or from a small estate shall be considered one proceeding pursuant to section 633.330.

2. ~~If the~~ The report and inventory and report shows shall show the gross value of probate assets subject to the jurisdiction of this state ~~which exceed~~.

3. If the gross value of probate assets subject to the jurisdiction of this state exceeds the amount permitted for a small estate under section 635.1, the estate shall be administered as provided in chapter 633.

~~3.~~ 4. If the ~~inventory~~ report and inventory in an estate probated pursuant to chapter 633 ~~indicates~~ shows the gross value of the probate assets subject to the jurisdiction of this state does not exceed the amount permitted under section 635.1, the estate shall be administered as a small estate upon the filing of a statement by the personal representative that the estate is a small estate.

~~4.~~ 5. Other interested parties may convert proceedings from a small estate to a regular estate or from a regular estate to a small estate only upon good cause shown with approval from the court.

Sec. 31. Section 635.8, Code 2011, is amended to read as follows:

635.8 Closing by sworn statement.

1. The personal representative shall file with the court a closing statement and proof of service thereof within a reasonable time from the date of issuance of the letters of appointment, ~~and the.~~ The closing statement shall be verified or affirmed under penalty of perjury, stating all of the following:

a. To the best knowledge of the personal representative, the gross value of the probate assets subject to the jurisdiction of this state does not exceed the amount permitted under section 635.1.

b. The estate has been fully administered and will be ~~disbursed and distributed to persons entitled to the estate thereto~~ if no objection is filed to the closing statement ~~after the requisite time period has expired as provided in subsection 2 and the accounting and proposed distribution within thirty days after service thereof.~~

c. ~~A description of the disbursement and~~ An accounting and proposed distribution of the estate including an accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the interest in the real estate and its disposition.

d. A copy of the closing statement and a notice of an opportunity to object to and request a hearing has been sent ~~by proper notice,~~ as provided in section 633.40, to all interested parties.

e. ~~The personal representative has complied with~~ A statement as to whether or not all statutory requirements pertaining to taxes have been complied with, including whether federal estate tax was paid or a return was filed, whether Iowa inheritance tax was paid or a return was filed, whether the decedent's final personal income taxes were filed, whether fiduciary income tax returns for the estate were filed, and due has been paid, whether a lien continues to exist for any federal ~~or~~ state estate tax, and whether inheritance tax was paid or a tax return was filed in this state.

f. The amount of fees to be paid to the personal

representative and the personal representative's attorney with the appropriate documentation showing compliance with subsection 4.

2. If no actions or proceedings involving the estate are pending in the court thirty days after ~~notice~~ service of the closing statement ~~is filed, the~~ the estate shall be distributed according to the closing statement.

3. The estate shall close and the personal representative shall be discharged after distribution upon the earlier of either of the following:

a. The filing of a statement of disbursement of assets with the clerk by the personal representative an affidavit of mailing or other proof of service of the closing statement and a statement of asset distribution by the personal representative.

b. An additional thirty days have passed after notice of the Sixty days after the filing of the closing statement is filed and an affidavit of mailing or other proof of service thereof.

~~3.~~ 4. ~~The closing statement shall include a statement as to the amount of fees to be paid for services rendered by the personal representative and the personal representative's attorney in administration of the estate. The fees for the personal representative shall not exceed three percent of the gross value of the probate assets of the estate, unless the personal representative itemizes the personal representative's services to the estate. The personal representative's attorney shall be paid reasonable fees as approved by the court or as agreed to in writing by the personal representative at or before and such writing shall be executed by the time of filing the probate inventory or as approved by the court. All interested parties shall have the opportunity to object and request a hearing as to all fees reported in the closing statement.~~

~~4.~~ 5. If a closing statement is not filed within twelve months of the date of issuance of a letter of appointment, an interlocutory report shall be filed within such time period. Such report shall be provided to all interested parties at least once every six months until the closing statement has been filed unless excused by the court for good cause shown. The provisions of section 633.473 requiring final settlement within three years shall apply to an estate probated pursuant to this chapter. A closing statement filed under this section has the same effect as final settlement of the estate under

chapter 633.

Sec. 32. APPLICABILITY.

1. The sections of this Act amending sections 422.7, 450.4, 633.237, 633.246, 633.374, 633.375, 633.376, 633.377 and 633.471 apply to estates of decedents dying on or after July 1, 2012.

2. The section of this Act amending section 633.561 applies to all judicial proceedings on or after July 1, 2012, in which an order for the appointment of a guardian is sought or has been issued.

3. The sections of this Act amending or enacting sections 633A.3104, 633A.3108, 633A.3109, 633A.3110, 633A.3112, 633A.3113, 633A.3114, and 633A.3115 apply to trusts of settlors dying on or after July 1, 2012.

4. The sections of this Act amending or enacting sections 633A.2203 and 633A.4606 apply to trusts in existence on or after July 1, 2012.

5. The section of this Act amending section 633A.3102 applies to revocable trusts and powers of attorney in existence on or after July 1, 2012.

KRAIG PAULSEN
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 609, Eighty-fourth General Assembly.

W. CHARLES SMITHSON
Chief Clerk of the House

Approved _____, 2012

TERRY E. BRANSTAD
Governor